

REMARKS

The Office Action of August 18, 2009 has been carefully considered. Claims 1 and 3 were pending in the application and were rejected. Claim 1 has been amended and claim 3 is cancelled. The amended claim does not introduce new subject matter nor additional subject matter to the previous form of the claim.

35 USC 112

Claim 1 was rejected under 35 USC 112 second paragraph. It is believed the claim amendment moots the rejection.

35 USC 103

Claim 1 was rejected under 35 USC 103(a) as being unpatentable over Kageyama (US 5,834,049), in view of Ohta (US 4,892,747) and Light "Cook-Chill Catering", p. 107. Applicant traverses the rejection.

The Examiner conceded that Kageyama does not disclose the cooking method recited in the claim. The Examiner reasoned that the Kageyama process could be modified as per the cooking process of Ohta at Ex. 3. However, Ohta does not disclose the same two-step addition of cooking water that is disclosed in the claim. Thus the modification suggested by the Examiner would not lead the ordinary skilled worker to the presently claimed invention. Ohta, discloses a first cooking step in 4 L. of water and a second cooking step by adding 5 L. of boiling water to the rice, heating for an additional 20 minutes and then filtering off the remaining water. In contrast, the present claimed method recites a first addition of cooking water, cooking, and a second addition of the cooking water (30-70% of the cooking water is added in the first step; the rice is cooked and the residual amount of the cooking water is then added) and the bowl is left aside for 12 minutes before cooling.

Even further, the Examiner reasoned that the motivation for modifying Kageyama by the method of Ohta would be "to provide a sterile packaged rice product with high stability (col.6, lines 15-20)". However, this is an incorrect paraphrasing of the cited statement. Ohta at Col. 6, lines 15-20 states that the food of Ohta's invention was *superior to the control food* in stability

when processed to retort food. There was a difference in the content of Ohta's inventive food and Ohta's control food in that a carageenan solution (a thickener and filler) was added to the inventive boiled rice after cooking and before retort which was not added to the control food (col. 5, line 20 to col. 6, line 14). However both groups received the procedure of adding water at two different intervals (col. 5, lines 13-35). Therefore, one of ordinary skill in the art might be motivated to add carageenan for stability, but there does not appear to be motivation that the cooking process will be the stabilizing factor. For that reason, the office action fails to provide the "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" that is required by the Supreme Court in *KSR International Co. v. Teleflex Inc.* 550 USPQ2d 1385 (2007) (emphasis added).

The Examiner also conceded that Kageyama and Ohta fail to disclose the cooling in a water bath. The Examiner reasoned that it would have been obvious to use a water bath to chill the packaged cooked rice to efficiently stop cooking and discourage microbial growth. The Examiner relied upon disclosure at page 107 from the book entitled "Cook-Chill Catering: Technology and Management" by Light et al. Again, this is an incorrect paraphrasing of the cited statement. The disclosure states that if you are going to use an ice bath to cool the food, be sure that the food is well wrapped before immersing it in the ice bath because unwrapped food immersed in an ice bath was shown to lead to high bacterial counts at the end of chilled storage. The disclosure states that the practice "carries certain risks which may be considered unacceptable by the majority of practitioners and food microbiologists."

Further, Applicant requests that the Examiner supplement the one page taken from the entire book (page 107) because the single page supplied by the Examiner gives a skewed picture of what the book discloses. Particularly, at page 12, Light et al discloses that Cook-Chill Catering, which is the preparation of food for the catering industry (and which is the subject of the entire book) uses different refrigeration means than is usual. Light discloses that the catering industry is required to have refrigerators that operate between 0-3°C while commercial and domestic refrigerators rarely operate below 4°C. The reasons for the lower temperatures for catering services revolves mainly around slowing the growth of harmful microorganisms (page 12 first paragraph). Thus the disclosure that the Examiner relied upon at p. 107 of Light et al,

stating that motivation to use a water bath would be to discourage microbial growth, was incorrect and further was not directed to the ordinary skilled worker but to the specialized conditions of the catering industry.

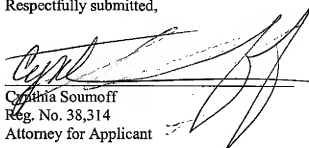
Further, none of the references relied upon disclose the time or temperature of the water bath as in the present claims. The Examiner reasoned that one having ordinary skill in the art would find it obvious to adjust the chilling time based on the size of the package in order to completely chill the packaged product. This "wisdom" appears to be a conclusory statement without basis that fails to provide the "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" as required by the Supreme Court, *id.*

Overall, therefore, it is submitted that the presently claimed invention is clearly patentable over the cited references. Reconsideration of the rejection is respectfully requested and allowance thereof courteously solicited.

The Examiner is invited to contact the undersigned should he believe that this would expedite prosecution of this application. The Commissioner is authorized to charge any deficiency or credit any overpayment of fees to Deposit Account No. 13-2165.

Respectfully submitted,

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